

A tale of two House committees

So why the difference between the Transport and Government Operations committees? Perhaps Transport Canada senior bureaucrats have convinced their minister, Marc Garneau, that all is well and that everything changed after Lac-Mégantic, while the failure from Integrity Commissioner's Office is too much to miss.



Ian Bron

Accountability

When Charles Dickens wrote the opening to *A Tale of Two Cities*, set more than 200 years ago, he described an age of contrasts—wisdom and foolishness, belief and skepticism, hope and despair. He also wryly observed that this could be said of any era. It certainly seemed true to whistleblowing advocates attending two sets of recent parliamentary committee hearings.

The committees in question were the Standing Committee on Government Operations and Estimates (or OGGO, as it's commonly known) and the Standing Committee on Transport, Infrastructure and Communities (or TRAN). In both cases, the committees had serious, deeply embedded problems to tackle: whistleblower protection on one hand, and aviation safety on the other.

For its part, OGGO set its sights on reviewing the Public Servants Disclosure Protection Act in early February. This is the law which is supposed to protect federal government whistleblowers, but which has been spectacularly ineffective at doing so for 10 years. Without going into details—David Hutton and Allan Cutler have dealt with the issues thoroughly in previous editions of *The Hill Times*—it would be no exaggeration to say that the law intended to protect whistleblowers is little known and even less trusted by the rank-and-file public service.

The second committee, TRAN, has been studying aviation safety. The main concern here is that Transport Canada's oversight has been steadily eroded, and not just in aviation: the same problems were evident in rail transportation before the 2013 Lac-Mégantic rail disaster that killed 47 people.

The Canadian Federal Pilots Association (CFPA) led the charge, making a powerful presentation about the increasing dangers in the system and noting that its members believe that a major crash is inevitable due to Transport Canada mismanagement.

The CFPA is not alone in its concern: the Auditor General's Office and the Transportation Safety Board have also



Canada's federal Transport Minister Marc Garneau, pictured in this file photo on the Hill. *The Hill Times* photograph by Jake Wright

criticized Transport Canada's management and oversight of transportation safety. Too much trust has been put into the hands of industry, the TSB argues: "Numerous recent investigations have found companies that have not managed their safety risks effectively, either because they were not required to have an SMS or because their SMS was not implemented effectively."

SMS refers to safety management systems, which—as implemented by Transport Canada—put safety almost entirely in the hands of the operators (airlines and railways) with little or no direct inspection by government.

It's worth noting that similar deregulation occurred in food safety prior to the 2008 Maple Leaf listeriosis outbreak that killed 22 Canadians and the 2012 XL Foods e-coli outbreak in Alberta that resulted in the largest food recall in Canadian history.

Whistleblowing advocates like us were there because—like many in the industry—we understand that whistleblower protection is the backbone of any SMS. After all, who knows better than insiders—pilots and mechanics—if corners are being cut on aviation safety? Sadly, government officials and airlines still routinely attack whistleblowers and cover up the problems.

Not that you would know this from Transport Canada's testimony. Both committees had this in common: senior public servants (and some industry officials) were happy to recite talking points designed to present themselves in the best possible light, confuse MPs, obscure truths, and minimize or disparage critics and whistleblowers.

In OGGO, Integrity Commissioner Joe Friday spoke of the challenges they faced and made excuses for poor performance. His list of suggested amendments to the law were almost all minor, and none could address the crucial problem: his office's abysmal performance. He was supported by Treasury Board officials, who could not hide the fact that they have no idea how well government departments were doing with their own internal whistleblowing systems.

Claims made by Transport Canada senior officials in TRAN were the standard

ones: that Canada has one of the safest systems in the world, and that action is being taken where there were concerns.

These are precisely the claims that were being made before the Lac-Mégantic rail disaster, a time when inspections had decreased and Transport Canada inspectors were held in contempt by railway companies (to the point that they ignored instructions to comply with the regulations). Questions by MPs about whistleblower protections were deflected with a dismissive answer. Other questions about inspection rates were met with confusing answers, obscuring the fact that the number of Transport Canada inspections of operators has fallen dramatically and continues to fall.

But the committees differ dramatically in how they responded to these tactics. Where we expected the usual *pro forma* exercise, OGGO called whistleblowers to testify and called in experts on whistleblowing law from four other countries. Best practices were considered. And the interest was not only on the opposition side: government MPs were also

engaged, even occasionally outraged when they got non-answers.

TRAN has not been as diligent, with too many evasions accepted and Transport Canada's record unquestioned. Opposition MPs seemed to sense that something more needed to be done, but feel helpless as a minority on the committee, and we had less success in engaging government MPs.

The TRAN committee's passivity is perplexing. It's certainly contrary to the interests of the government. If MPs are being misled by public servants, they should be outraged. For if the worst does happen, they will be responsible. Even the cost savings that seem to be driving the Transport Canada approach being used are ephemeral. The bill to the government (meaning you, the taxpayer) for the Lac-Mégantic disaster was more than \$135-million for the court settlement alone. How many rail inspections could that have paid for?

It's not too late, however. TRAN is now writing its report, and we hope that the committee has seen that the emperor has no clothes. Some MPs confided that they believe that Transport Canada is a sick organization. This is supported by the evidence, with one study and an upcoming book on the Lac-Mégantic disaster arguing that senior managers are preoccupied with 'turf' and reputation, rather than the safety of the public.

So why the difference between the two committees? Perhaps Transport Canada senior bureaucrats have convinced their minister, Marc Garneau, that all is well and that everything changed after Lac-Mégantic, while the failure from Integrity Commissioner's Office is too much to miss. Maybe TRAN is just lost in the pile of issues that every government must deal with. Perhaps the OGGO committee was just a chance gathering of motivated MPs who didn't like being given the run-around.

Whatever the case, it seems to us that all parties—including government MPs—need to be more skeptical and challenge public servant's testimony in the way OGGO did. This government also needs to take a hard look at Transport Canada. Accepting the recommendations of the CFPA would be a good step. Building solid whistleblower protections would be another. After all, it would be far better to stand in Parliament and say, "We are aware of the problems and have already taken steps..." than to have to rise and solemnly apologize—or worse, mourn the dead after a major aviation accident.

Ian Bron is vice-president of *Canadians for Accountability*, an NGO dedicated to helping whistleblowers and raising awareness about whistleblowing and accountability issues in Canada. He was chief of marine and aviation security regulations at *Transport Canada* between 2004 and 2006, and raised concerns about the failure to enforce regulations.

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